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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,048	01/21/2004	Samuel David Arthur	CL1845 US DIV	4475

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EXAMINER

SELLERS, ROBERT E

ART UNIT PAPER NUMBER

1712

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/762,048

Applicant(s)

ARTHUR, SAMUEL DAVID

Examiner

Robert Sellers

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18 and 20-32 is/are pending in the application.
- 4a) Of the above claim(s) 27 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18, 20-26 and 29-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 18, 20, 21, 23-26, 29, 30 and 32 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Japanese Patent No. 50-85632 (Japanese '632).

1. Japanese '632 discloses a cured powder coating comprising a polyepoxide, a carboxyl groups-containing polymer treated with ammonia or organic amines. A translation has been ordered. The claimed cured product merely requires ammonia or organic amines regardless of whether it is present during or after the formulation of the powder coating.
2. Any claim language pertaining to the exposure of the powder coating to ammonia or organic amines merely denotes the process whereby the cured product is prepared which is a product-by-process claim wherein the determination of patentability is based on the cured product (MPEP § 2113, "Product-by-Process Claims" and *In re Marosi*, 218, USPQ 289, 292, Federal Circuit 1983). The cured product of the prior art with the same components anticipates that claimed.

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Claims 18, 20-25 and 29-32 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kwon et al. Patent No. 5,262,510 or Ohoka et al. Patent No. 4,130,601 or de Cleur et al. Patent No. 3,966,836 or Johannes et al. Patent No. 4,223,097 or Goring Patent No. 4,507,441.

3. Each of the references set forth powder coatings prepared from the elected species of carboxyl-functional polyesters and polyepoxides such as the elected species of a bisphenol A polyepoxide (de Cleur et al., col. 4, lines 12-13; Johannes et al., col. 6, lines 22-23, Examples; and Goring, col. 1, lines 55-57 and col. 2, Example I, line 28) combined with tertiary amines such as the triethylamine of withdrawn claim 28 (Kwon et al., col. 3, lines 40-45 and Ohoka et al., col. 2, lines 35-42, wherein imidazoles are also reported), tertiary amines such as benzyldimethylamine or imidazoles (de Cleur et al., col. 5, lines 9-12), imidazoles or other cyclic amine compounds (Johannes et al., col. 1, line 66 to col. 2, line 51), or imidazole or benzotriazole (Goring, col. 2, Example I, line 34).

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Claims 18, 20-25 and 29-32 are rejected under 35 U.S.C. 102(a, b or e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over European Patent No. 194,904 (European '904) or Zhou et al. Patent No. 6,534,178 or Shah et al. Patent No. 5,880,223 or European Patent No. 136,263 (European '263).

4. Each of the prior art are directed to powder coatings containing a carboxylated polyester, a bisphenol A epoxy resin and amine compounds (Zhou et al., col. 5, lines 47-48) such as the imidazole, 2-methylimidazole, 2-phenylimidazole or 2-isopropylimidazole of claim 24 (European '904, abstracts and page 2, lines 19-21).

Claims 18, 20, 21, 23-25, 29, 30 and 32 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hart et al. Patent No. 6,479,585.

5. Hart et al. (col. 2, line 66 to col. 3, line 8) espouses a powder coating obtained from a carboxyl-functional acrylic resin, a polyepoxide such as a bisphenol A epoxy resin (col. 5, lines 5-7) and a catalyst such as imidazoles represented by unsubstituted imidazoles, 2-methylimidazole and 2-phenylimidazole (col. 6, lines 12-14), tertiary amines such as dimethylaniline (col. 6, lines 26 and 28) and imidazolines such as 2-phenylimidazoline (col. 6, lines 34-36).

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6. The prior art applied hereinabove does not indicate whether the cured powder coating is "substantially free of catalyst residue" as required in independent claims 18 and 29. The ammonia- or organic amine-treated mixture of polyepoxide and carboxyl groups-containing polymer<sup>of</sup> Japanese '632 and the powder coating blends of the remaining applied references inherently do not contain any catalyst residue since they are included in small catalytic amounts. The burden of proof shifts to applicant to determine whether or not any catalyst residue remains (In re Fitzgerald, 205 USPQ 594, CCPA 1980 and MPEP §§ 2112-2112.02).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Poincloux et al. Patent No. H1667; Kulzick et al. Patent No. 6,555,226; German Patent No. 2,758,006 and Japanese Patent No. 2000-80307 are also pertinent under 35 U.S.C. 102(b or e) or 103(a) since they describe powder coatings derived from carboxyl groups-containing polyesters, epoxy resins and amine or imidazole catalysts. However, they have not been applied since they do not further add to the 35 U.S.C. 102(a, b or e) or 103(a) rejection set forth in previous paragraphs 4 and 6.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Sellers whose telephone number is (571) 272-1093. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

rs  
11/4/2005



ROBERT E.L. SELLERS  
PRIMARY EXAMINER